IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 56 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIMBHAI ALIAS NIRMALBHAI VASKURBHAI KHACHAR

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioners

MR UA TRIVEDI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/01/2000

ORAL JUDGEMENT

1. Rule. Mr. Trivedi, learned Additional Public Prosecutor, waives service of Rule on behalf of the State.

2. Heard learned advocate, Mr. Lakhani and learned

Additional Public Prosecutor, Mr. Trivedi.

3. The facts leading to this petition are that, a Sessions Case, bearing No.14 of 1998, came to be decided by learned Additional Sessions Judge, at Surendranagar, involving the petitioner for offences punishable under Sections 147, 148, 149 and 302 of Indian Penal Code and Section 25(1)(a) and (b) of the Arms Act. The learned Additional Sessions Judge acquitted all the accused persons, including the present petitioner. In that case, two weapons were allegedly used. Those weapons belong to the petitioners and they are given licence for the same, for the purpose of acquisition, possession and carrying on arms and ammunition by appropriate authority. The learned Additional Sessions Judge, while passing the orders for disposal of muddamal, ordered confiscation of the two weapons. Being aggrieved by the said order, the present petition is filed.

4. The main grounds of challenge are that, no inquiry is held in regard to disposal of the muddamal. The learned Additional Sessions Judge has not considered that the petitioners are licence holders for the weapons. The learned Additional Sessions Judge has not considered that the weapons were not used in the commission of the crime, as per the ballistic report.

5. On the other hand, it appears that the weapons were seized from person other than the licence holders. In this view of the matter, it appears that the learned Additional Sessions Judge, before passing the order for confiscation of the weapons, ought to have either himself conducted the inquiry or directed the learned Chief Judicial Magistrate to hold the inquiry and, thereafter, passed the an appropriate order for disposal of the muddamal weapons, in view of the fact that in the Sessions Court, the petitioners have been acquitted of the charged that were levelled against them.

6. The petition is, therefore, allowed to the extent that the impugned order passed by the learned Additional Sessions Judge in Sessions Case No.14 of 1998 vide Ex.64, ordering confiscation of the weapon and subsequent order passed below Misc. Application No.46 of 1999 on 7th January, 2000 are quashed and set aside, with a direction that the learned Sessions Judge shall either himself or through the learned Chief Judicial Magistrate hold an inquiry for the purpose of passing the order for disposal of muddamal on conclusion of the trial, as contemplated under Section 452 of the Code of Criminal Procedure. Rule is made absolute accordingly. Direct

service permitted.

[A.L. DAVE, J.]

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